

Service Date: April 27, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF THE APPLICATION)	UTILITY DIVISION
OF MOUNTAIN WATER COMPANY for)	
Authority to Increase Rates and Charges for Water)	DOCKET NO. D2005.4.49
Service to its Missoula, Montana, Customers)	ORDER NO. 6644d

ORDER ON MOTION FOR
RECONSIDERATION AND APPLICATION
FOR REHEARING

BACKGROUND AND INTRODUCTION

1. On February 3, 2006 the Montana Public Service Commission (Commission) issued Final Order No. 6644c in this docket, an application from the Mountain Water Company (Mountain or Mountain Water) to increase rates and charges for water service to its Missoula, Montana customers. In response, on February 21, 2006 Mountain filed a Motion for Reconsideration and Application for Rehearing (Motion and Application). On March 7, 2006 the City of Missoula (City) filed objections to the Motion and Application, and on March 8, 2006 the Montana Consumer Counsel (MCC) filed comments on the Motion and Application. Mountain filed a reply to the City's objections on March 17, 2006. By this Order the Commission responds to and acts on Mountain's Motion and Application.

SUMMARY OF MOTION AND APPLICATION

2. Relevant to this Order the Commission made the following decisions in Order No. 6644c:

1) approved the City's proposal to shift the recovery of certain fire flow costs from the City to Mountain customers; and 2) directed Mountain to make a filing on system metering. See Implementation paragraphs 43 and 44, and ORDER paragraphs 6 and 7. Mountain contends that the Commission's decision on the recovery of certain fire flow costs "lacks a reasoned basis" because it is not based on the reasons the City gave to support its advocacy. Mountain also contends that the Commission exceeded its jurisdiction by basing its cost recovery decision on the City's assertion of unfair state tax policy. "It is not within the province of the Commission to set rates to cure what it perceives to be tax policies disadvantageous to the City of Missoula." Motion and Application, p.7. Finally, Mountain urges the Commission to make its decision on shifting fire flow cost recovery contingent on a rate design study that will explore the consequences of the shift on all Mountain customers.

3. With respect to the Commission's decision on system metering, Mountain characterizes it as a "startling mandate that Mountain force its flat rate customers to transition to metered service within five years [that] suddenly materialized as a fait accompli in the final order in this docket." Id. at 2. Mountain contends the Commission's decision violates due process, several sections of the Montana Administrative Procedure Act (MAPA), and Commission Procedural Order No. 6644 in this docket. Mountain argues there is no evidence on the record to support a "mandate that Mountain force its existing flat rate customers to metered service within five years." Id. at 5. Mountain urges the Commission to vacate its decision on system metering; or, in the alternative to

grant a limited rehearing to take evidence "regarding the forced transition of all existing flat rate customers to metered service within the next five years." Id. at 6.

4. The MCC supports Mountain's Motion for Reconsideration and, presumably, its alternative Application for Rehearing. The City urges that the Commission "should steadfastly continue in effect [Order No. 6644c.]" City Objections, p. 10.

DISCUSSION AND DECISIONS

5. As described below, the Commission denies Mountain's Motion and Application. In response to Mountain and MCC the Commission clarifies Order No. 6644c; and, on its own motion, changes implementation deadlines, and, in part, the direction contained at ORDER paragraph 8.

6. The discussion of shifting the recovery of certain fire flow costs from the City to Mountain customers is contained at paragraphs 25-32 of Order No. 6644c. This issue was fully litigated on this record. The contention that the Commission's reasoning when considering an issue is limited by party advocacy is without merit. The Commission may lawfully apply its own specialized knowledge to the evaluation of an issue. The Commission did that at paragraphs 29-31, and party arguments on reconsideration do not persuade the Commission that its reasoning therein is flawed.

7. Mountain is incorrect that the Commission based its decision on a perception of unfair state tax policy. The Commission did not opine on the fairness of tax policy; rather, it noted the existence of that policy and the fact that it contributes to an inequitable sharing of utility system costs. The Commission's finding at the last sentence of paragraph 30 is directed at that inequity, not at state tax policy.

8. Just as state tax policy is not the purview of the Commission, as Mountain Water reminds, neither is the operation of Missoula City government. Both Mountain and the MCC express concern

that the City will be relieved of the burden of certain fire protection costs, but will not correspondingly relieve property taxpayers of that burden. This concern is understandable; but, like the issue of City incentives to control fire flow costs, is an issue of public accountability. See Order No. 6644c, paragraph 31. The Commission's responsibility is to ensure that Mountain charges just and reasonable rates, not to assess the efficiency and/or fairness of actions that could be taken by Missoula City government.

9. The Commission will not vacate its decision to shift responsibility for the fire flow costs at issue in this docket, and affirms the direction given at paragraph 44 (with the exception of the deadline contained therein). Mountain is correct that, as noted at paragraph 45, there will be the usual process for stakeholder participation following the receipt of its proposal.

10. With respect to system metering, Mountain and MCC misunderstand Order No. 6644c, and therefore make erroneous assertions that the Order is unlawful. Because of that misunderstanding the Commission will clarify and reiterate its findings on this issue.

11. The Commission did not mandate a "forced transition of all flat rate customers to metered service in five years_[.]" Motion and Application, p. 3 and passim. Rather, beginning at paragraph 35 of Order No. 6644c, it did the following.

12. First, it indicated that it would not order a change in Mountain's current allocated cost-of-service methodology in this docket, but noted that "the City's participation in this docket casts light on that methodology and raises the question whether changes should be made within the next several years." Second, the Commission noted a 1978 proceeding (Docket No. 6546, Order No. 4417b) in which it reviewed a cost-of-service/rate design proposal of the Montana Power Company, found the proposal compelling as to basic ratemaking principles, but rejected it because of the lack of data derivable from the mostly unmetered system. Third, the Commission noted its very strongly stated conclusions in Order No. 4417b that fundamental ratemaking objectives cannot be met in the

absence of "universal metering," and that, therefore, an aggressive universal metering program should be implemented on the Missoula system. Fourth, the Commission noted its acceptance, since 1981, of an allocated cost-of-service methodology sufficient for a system that is not fully metered. Fifth, in light of the importance of universal metering, the Commission noted the pace of progress toward universal metering on the Missoula system since 1978, found it wanting, and concluded that it must be greatly accelerated.

13. In order to explore accelerated metering of the Missoula system, the Commission directed Mountain to make a specific filing as described at paragraph 43. The direction at paragraph 43, filing requirement 3, has apparently caused some confusion. It states that Mountain is to file "a proposal and plan for a significant acceleration in the pace of metering installation, with the objective of universal metering in five years." This means that the proposal and plan should be for the creation of a fully metered system in five years. It does not mean that the Commission has concluded that the system should be fully metered in five years. It is a starting point for exploring the question. It could be that the word "proposal" is the source of some confusion because there can be an implication that a thing proposed is supported by the person or entity making the proposal. If that is the case parties may consider the word "proposal" deleted. The effect of the direction is the same: submit a plan for universal metering of the system within five years (along with, obviously, Mountain's assessment of the costs of implementation). Then, if Mountain thinks the plan it submits is unwise, it can so indicate and explain its reasons. It can argue for the status quo; it can argue for a different time period; it can make "other relevant discussion that [it] chooses to bring to the Commission's attention." Intervenors will have the opportunity to do the same. At the conclusion of this process the Commission will make a decision.

14. The Commission reaffirms its finding at paragraph 40, that based on the careful and firm conclusions it reached after a contested case almost 30 years ago - that universal metering is

necessary to meet certain basic ratemaking objectives - the pace of metering on the Missoula system "must be greatly accelerated." The process created in Order No. 6644c, paragraph 43, will lead to a review of that finding after the involvement of all interested stakeholders.

15. Order No. 6644c does not violate due process rights of the parties, provisions of MAPA, or Procedural Order No. 6644. The Order contains no mandate to universally meter the system within five years; the Order fully explains the Commission's interest in Mountain's system metering and establishes a process for exploring system metering, which exploration will be fully noticed to the public and stakeholders at the proper time. The Commission has taken no action in this docket in the absence of record evidence. Mountain Water's request for a "limited rehearing" on system metering is denied as moot. Mountain will have an opportunity for a full hearing on system metering consistent with process established in Order No. 6644c.

CONCLUSIONS OF LAW

1. The Commission incorporates by reference and affirms its Conclusions of Law at Order No. 6644c.

2. Order No. 6644c and this Order are lawful orders of the Commission, and do not violate Title 69, MCA; Title 2, Chapter 4, MCA; any other order or rule of the Commission; nor the due process rights of the parties.

ORDER

Now Therefore It Is Ordered:

1. Mountain Water's Motion for Reconsideration is denied.
2. Mountain Water's Application for Rehearing is denied as moot.
3. Order No. 6644c, Implementation paragraph 43, is modified such that Mountain is

directed to make the filing with its next general rate case, or by May 1, 2007, whichever is earlier.

4. Order No. 6644c, Implementation, paragraph 44, is modified such that Mountain is directed to make the filing by September 15, 2006.

5. Order No. 6644c, Implementation, paragraph 45, and Order No. 6644c, ORDER paragraph 8 are modified such that Docket No. D2005.4.49 remains open for purposes of receiving, processing and acting on the filing described at paragraph 44; and the City and the MCC remain parties to this docket. The filing received pursuant to paragraph 43 will be given a new docket number at the time of filing and noticed according to the usual practice.

DONE AND DATED this 26th day of April, 2006 by a vote of 3 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DOUG MOOD, Commissioner Presiding

BRAD MOLNAR, Vice Chairman

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)